COLORADO ENVIRONMENTAL COALITION, ET AL.

IBLA 96-243 Decided June 10, 1999

Appeal from a decision of the Colorado State Office, Bureau of Land Management, denying protest to issuance of six competitive oil and gas leases. COC-58680, et al.

Affirmed.

1. Environmental Quality: Environmental Statements-- National Environmental Policy Act of 1969: Environmental Statements--Oil and Gas Leases: Competitive Leases--Oil and Gas Leases: Offers to Lease--Wilderness Act

BLM is not required to undertake a site-specific environmental review prior to issuing an oil and gas lease when it previously analyzed the environmental consequences of leasing the land, and declined to designate the land for further study and protection as a wilderness study area under section 603 of the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. § 1782 (1994).

APPEARANCES: Edward B. Zukoski, Esq., Land and Water Fund of the Rockies, Inc., Boulder, Colorado, for Appellants.

OPINION BY ADMINISTRATIVE JUDGE KELLY

The Colorado Environmental Coalition (CEC), Sierra Club (Uncompahgre Group), and The Wilderness Society (hereinafter, Appellants) have appealed from a February 2, 1996, decision of the Colorado State Office, Bureau of Land Management (BLM), denying their protest to the issuance of six competitive oil and gas lease parcels designated as COC-58680, COC-58689, COC-58690, COC-58740, COC-58741, and COC-58745. The sale was held, as scheduled, on November 9, 1995, and six 10-year competitive oil and gas leases were issued on November 22 and 30, 1995, all with an effective date of December 1, 1995.

The leases encompass 9,705.59 acres of public land in northwestern Colorado. Most of parcel Nos. COC-58689 and COC-58690 and a small portion of parcel No. COC-58680 are within the 31,391-acre South Shale Ridge wilderness area inventory unit; most of parcel Nos. COC-58740 and COC-58741 and a small portion of parcel No. COC-58745 are within the 20,100-acre

Pinyon Ridge wilderness area inventory unit. (Statement of Reasons for Appeal (SOR) at 1; Exs. 1 through 3 attached to SOR.) Appellants previously supported the designation of these areas as wilderness areas under the Wilderness Act, as amended, 16 U.S.C. §§ 1131-1136 (1994).

Both areas were inventoried by BLM to determine whether they qualified as wilderness study areas (WSA) under section 603 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, 43 U.S.C. § 1782 (1994); by decision dated November 14, 1980, BLM found that neither qualified. 45 Fed. Reg. 75584, 75585 (Nov. 14, 1980). As a result of a protest and subsequent appeal by CEC and others, BLM reinventoried the South Shale Ridge area and rendered a final decision on June 11, 1984, finding that the area did not qualify as a WSA. See Sierra Club-Rocky Mountain Chapter, 75 IBLA 220 (1983); 49 Fed. Reg. 24085 (June 11, 1984). No appeal was taken from that decision. As to the Pinyon Ridge area, no protest was filed to BLM's November 14, 1980, decision finding that it did not qualify as WSA. See 46 Fed. Reg. 1033, 1035 (Jan. 5, 1981).

In the case at hand, Appellants filed their protest against issuance of the leases on January 8, 1996, arguing that BLM failed to notify CEC of the pending sale, and violated section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. § 4332(2)(C) (1994), by not adequately analyzing the environmental impacts of oil and gas exploration and development.

In its February 2, 1996, decision, BLM responded that in accordance with 43 C.F.R. § 3120.4-2, a Notice of Competitive Lease Sale was posted for public view on September 25, 1995, in all Colorado BLM offices and U.S. Forest Service offices, and made available to the public for a fee. BLM further stated that copies of the notice were mailed to those who had already paid for that service by maintaining declining deposit accounts, as required by the Department's cost recovery guidelines.

Moreover, BLM noted that during its wilderness inventory pursuant to section 603 of FLPMA, part of the criteria for omitting the South Shale Ridge and Pinyon Ridge areas from the inventory was "the number of existing oil and gas leases and encroaching gas field development." (Decision at 1.) BLM concluded that its leasing proposals conformed to the decisions of BLM's applicable land use plans, and that "there is insufficient justification to cancel the leases." (Decision at 2.) Appellants filed a timely notice of appeal.

In their SOR, Appellants argue that BLM violated section 102(2)(C) of NEPA by failing to analyze the site-specific environmental impacts of the lease sale. They recognize that BLM's November 1985 Grand Junction Resource Area Resource Management Plan/Environmental Impact Statement (RMP/EIS), analyzed the environmental impacts of leasing 1.5 million acres of land for oil and gas purposes in the Grand Junction Resource Area, which encompasses the land in parcel Nos. COC-58680, COC-58689, and COC-58690. They also recognize that BLM's February 1982 White River Resource Area Oil

and Gas Umbrella Environmental Assessment (Umbrella EA), analyzed the environmental impacts of leasing 1.5 million acres of land for oil and gas purposes in the White River Resource Area, which encompasses the land in parcel Nos. COC-58740, COC-58741, and COC-58745.

However, in both cases, Appellants maintain that the applicable environmental review document did not address the site-specific impacts of leasing any particular lands, including the adverse effects of resulting oil and gas exploration and development on wilderness values in the areas. Thus, Appellants request that the Board set aside BLM's decision to issue the six leases until it fully complies with section 102(2)(C) of NEPA by undertaking a site-specific environmental review.

At the outset, we note that the time for taking an appeal from BLM's decisions that the South Shale Ridge and Pinyon Ridge areas were not suitable for designation as WSA's has long since passed. Accordingly, we conclude that the doctrine of administrative finality precludes Appellants from now challenging those decisions. See San Juan County Commission, 123 IBLA 68, 71 (1992) and cases cited. Moreover, we know of no legal mandate that requires BLM to manage those areas on the basis that they might, at some future time, be designated as protected wilderness areas. See Southern Utah Wilderness Alliance (SUWA), 128 IBLA 52, 65-66 (1993).

[1] We therefore examine the sole question of whether BLM violated section 102(c) of NEPA by failing to undertake a site-specific environmental review of the parcels at issue. It is well established that the time for considering the potential environmental impacts of oil and gas exploration and development under section 102(2)(C) of NEPA is when BLM is proposing to lease public lands for oil and gas purposes, since leasing makes an irreversible and irretrievable commitment to permit surface-disturbing activity, in some form and to some extent. See Sierra Club v. Peterson, 717 F.2d 1409, 1414-15 (D.C. Cir. 1983); Union Oil Co. of California, 102 IBLA 187, 191 (1988) and cases cited.

In the case of proposed leasing in the South Shale Ridge area and other parts of the Grand Junction Resource Area, BLM prepared its 1985 RMP/EIS. Under section 102(2)(C) of NEPA, the adequacy of BLM's EIS must be judged by whether it constituted a "detailed statement," which took a "hard look" at the potential environmental consequences of the proposed leasing, considering all relevant matters of environmental concern. 16 U.S.C. § 4332(2)(C) (1994); Colorado Environmental Coalition (CEC), 142 IBLA 49, 52 (1997) and cases cited.

As to proposed leasing in the Pinyon Ridge area and other parts of the White River Resource Area, BLM prepared its 1982 Umbrella EA. The adequacy of that EA, under section 102(2)(C) of NEPA, must be judged by whether BLM likewise took a "hard look" at the potential environmental impacts of the proposed leasing. See Nez Perce Tribal Executive Committee, 120 IBLA 34, 37-38 (1991) and cases cited. In addition, because an EA is prepared for the purpose of determining whether an EIS is required by section 102(2)(C)

of NEPA, the EA must make a convincing case that the leasing will not result in any significant impact, or that any impact will be reduced to insignificance by the adoption of appropriate mitigation measures. Id.

In general, both an EIS and EA must fulfill the primary mission of NEPA, which is to ensure that in exercising the substantive discretion afforded it to approve or disapprove leasing, BLM is fully informed regarding the environmental consequences of such action. See 40 C.F.R. §§ 1500.1(b) and (c); Natural Resources Defense Council, Inc. v. Hodel, 819 F.2d 927, 929 (9th Cir. 1987). In deciding whether an EIS or EA promotes informed decisionmaking, it is well settled that a rule of reason will be employed; thus, the question becomes whether an EIS or EA contains a "reasonably thorough discussion of the significant aspects of the probable environmental consequences" of the proposed leasing. State of California v. Block, 690 F.2d 753, 761 (9th Cir. 1982) (quoting Trout Unlimited v. Morton, 509 F.2d 1276, 1283 (9th Cir. 1974)).

When BLM has complied with the procedural requirements of section 102(2)(C) of NEPA, by actually taking a hard look at all of the likely environmental impacts of a proposed action, it will be deemed to have complied with the statute, regardless of whether a different substantive decision would have been reached by this Board or a court (in the event of judicial review). See Strycker's Bay Neighborhood Council, Inc. v. Karlen, 444 U.S. 223, 227–28 (1980), and cases cited. As we said in Oregon Natural Resources Council, 116 IBLA 355, 361 n.6 (1990):

> [Section 102(2)(C) of NEPA] does not direct that BLM take any particular action in a given set of circumstances and, specifically, does not prohibit action where environmental degradation will inevitably result. Rather, it merely mandates that whatever action BLM decides upon be initiated only after a full consideration of the environmental impact of such action.

In order to overcome BLM's decision to proceed with leasing, Appellants must carry their burden to demonstrate by a preponderance of the evidence, with objective proof, that BLM failed to consider or to adequately consider a substantial environmental question of material significance to the proposed action or otherwise failed to abide by section 102(2)(C) of NEPA. CEC, 142 IBLA at 52; SUWA, 127 IBLA 331, 350, 100 I.D. 370, 380 (1993).

We are not persuaded that the 1985 RMP/EIS and 1982 Umbrella EA did not provide an adequate analysis of the site-specific impacts of issuing oil and gas leases of the six parcels of land at issue here.

In reference to the Grand Junction Resource Area, BLM considered a varied program of leasing and no leasing: 653,868 acres (Open to Leasing Without Stipulations), 132,078 acres (Open to Leasing with No Surface Occupancy Stipulation), 555,655 acres (Open to Leasing with Other Stipulations), and 117,790 acres (Closed to Leasing). (ROD at 2-7 to 2-8, "Map

5"; see Draft RMP/EIS, dated March 1985, at 31-32.) The stipulations were keyed to specific areas, and were designed to protect sensitive resources, including geology/paleontology, wildlife, threatened and endangered species, visual resources, and recreational resources, by precluding all surface-disturbing activity or by imposing certain restrictions on such activity. See ROD at 2-9 to 2-10, 2-39, 2-40, Appendix D, "Map 20"; Draft RMP/EIS at 31-36, 95-109, Appendix E. Leasing/no leasing was further broken down on the basis of three regions in the Resource Area, which were defined by their relative potential for producing oil and gas. (Draft RMP/EIS at 118.) BLM projected that there would be a total of 1,000 new oil and gas wells, distributed in the regions with moderate to high oil and gas potential, which, together with roads, pipelines, and other related facilities, would disturb a total of 2,538 acres at any one time and 7,705 acres over the 20–year life of the plan. Id. at 118, 146.

Moreover, both the RMP/EIS and the Umbrella EA demonstrate that BLM considered the impact of oil and gas leasing and subsequent oil and gas exploration and development throughout the 1.5-million acre planning area. In so doing, BLM thoroughly reviewed the many specific potential environmental impacts, including those to air quality, soils, water resources, wildlife, threatened and endangered species, visual resources, and recreational resources, taking into account the diversity of land, plant and animal species, and other environmental factors across that area. (Draft RMP/EIS at 37, 113-141, 118-19, 200-18, Appendix E; Umbrella EA at 22-133, Appendix A.)

In the case of the White River Resource Area, BLM considered the basic alternatives of leasing, subject to appropriate stipulations, or not leasing. The stipulations, which were keyed to specific areas, were designed to protect sensitive resources, including geology, wildlife, threatened and endangered species, visual resources, and recreational resources, which were to be protected either by precluding all surface-disturbing activity or by imposing certain restrictions on such activity. See Umbrella EA, Appendix C. BLM projected that in the initial 5-year period from 1981 through 1985, there would be a total of 1,524 new oil and gas wells, which, together with roads, pipelines, and other related facilities, would disturb a total of 14,630 acres. Id. at 6, 9.

In the case of both the 1985 RMP/EIS and 1982 Umbrella EA, while BLM specifically assessed the impacts of leasing per se, it left to a later day the evaluation of the site-specific environmental impacts of roadbuilding, drilling, pipeline construction, and other particular activity associated with oil and gas exploration and development.

Appellants assert that the six parcels at issue here contain lands which serve to distinguish them from the other lands expressly addressed in the RMP/EIS and Umbrella EA. However, Appellants have presented no evidence that any of the parcels is so distinct that we can conclude that BLM overlooked, in its RMP/EIS and Umbrella EA, a particular site–specific impact which would be experienced in that parcel alone.

Further, we do not find that Smith v. U.S. Forest Service, 33 F.3d 1072 (9th Cir. 1994), cited by Appellants, requires BLM to do more than it has. As we stated in CEC, 142 IBLA 49, 53-54 (1997):

> The court in Smith did not require the Forest Service, which was deciding whether to permit a timber sale, to address the effect of that action on possible wilderness designation by Congress. At best, the court in Smith stated, as quoted by CEC, that the "possibility of future wilderness classification triggers, at the very least, an obligation on the part of the agency to disclose the fact that development will affect a 5,000 acre roadless area." (Supplemental Authority and Statement at 3 (quoting from Smith v. U.S. Forest Service, 33 F.3d at 1078) (emphasis added).) The court was speaking of a 6,246-acre roadless area, of which 4,246 acres had never been inventoried by the Forest Service for potential designation as wilderness, and 2,000 acres had been so inventoried but then rejected by Congress for wilderness designation. See Smith v. U.S. Forest Service, 33 F.3d at 1074, 1077. In these circumstances, the court concluded that the Forest Service should at least "acknowledge the existence of the 5,000 acre roadless area," and that development might affect it, where that area had never before been recognized. Id. at 1079.

Unlike the situation in Smith, the present case does not involve a roadless area of more than 5,000 acres which had never been inventoried and acknowledged by BLM. Rather, both the South Shale Ridge and Pinyon Ridge areas were inventoried and found unsuitable for potential wilderness designation. Having made these determinations, BLM is not now required to consider how oil and gas leasing may affect their suitability as wilderness areas.

Most importantly, Appellants have failed to identify any potential environmental impact, site-specific or otherwise, which was not adequately addressed in the RMP/EIS and Umbrella EA. We therefore conclude that Appellants have failed to demonstrate, by a preponderance of the evidence with objective proof, that BLM failed to consider or to adequately consider a substantial environmental question of material significance. CEC, 142 IBLA at 52; SUWA, 127 IBLA at 350, 100 I.D. at 380. Nor are we persuaded that there is any new circumstance or information, arising since preparation of the RMP/EIS and Umbrella EA, which indicates that there may be an environmental impact not previously considered, thus requiring preparation of a supplemental EA and/or EIS. See 40 C.F.R. § 1502.9(c); CEC, 130 IBLA 61, 67-68 (1994).

Finally, Appellants request that the Board award them their costs of litigation, including reasonable attorney's fees, pursuant to section 203(a)(1) of the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 (1994). Since Appellants have not prevailed in any degree in this proceeding, their request is denied.

Therefore, we conclude that BLM's February 2, 1996, decision denying Appellants' protest was proper and must be affirmed. To the extent Appellants have raised arguments which we have not specifically addressed, they have been considered and rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

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John H. Kelly
Administrative Judge

I concur:

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R.W. Mullen
Administrative Judge